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12 ZUMBA FITNESS, LLC

13 UNITED STATES DISTRICT COURT

14 CENTRAL DISTRICT OF CALIFORNIA

15 ZUMBA FITNESS, LLC, a Florida  
16 Limited Liability Company,

17 Plaintiff,

18 vs.

19 RENEE ETHERIDGE, an Individual,  
20 and Does 1-10, Inclusive,

21 Defendants.

LACV11-5356 PA(VBKx)

Case No.

COMPLAINT FOR DAMAGES:

- (1) FEDERAL TRADEMARK INFRINGEMENT [15 U.S.C. § 1114/Lanham Act §32(a)]
- (2) FEDERAL COPYRIGHT INFRINGEMENT [17 U.S.C. §501(a)];
- (3) FALSE DESIGNATION OF ORIGIN/UNFAIR COMPETITION [15 U.S.C. §1125(a)/Lanham Act §43(a)];
- (4) TRADEMARK DILUTION [15 U.S.C. §1125(c)];

**(5) UNFAIR BUSINESS  
PRACTICES [*CALIFORNIA  
BUSINESS & PROFESSIONS  
CODE §17200*];  
(6) UNFAIR COMPETITION  
(California Common Law); and  
(7) UNJUST ENRICHMENT**

**DEMAND FOR JURY TRIAL**

COMES NOW, Plaintiff ZUMBA FITNESS, LLC (hereinafter "Plaintiff"),  
to hereby file its Complaint against RENEE ETHERIDGE, and Does 1-10,  
inclusive (collectively "Defendants").

**PARTIES**

1. Plaintiff is now, and was at the time of the filing of this Complaint  
and at all intervening times, a Florida Limited Liability Company. Plaintiff  
conducts and operates a substantial part of its business in California, including the  
operations of Zumba® Fitness Trainings and Zumba® Fitness product sales. Also,  
Plaintiff fulfills orders for its DVD products out of operations facilities located in  
Los Angeles, California. Additionally, the management of Zumba® Fitness DVD  
product sales occurs within Los Angeles area, inside of California. Plaintiff's  
Direct Response Television Commercial operations are also conducted out of  
facilities located in Los Angeles, California. Furthermore, the video production  
companies employed by Zumba Fitness® to produce their popular Zumba®  
Fitness television and DVD programs operate within Los Angeles California,  
among other locations, and numerous Zumba® Fitness instructional and  
promotional programs and videos have been filmed and produced in California,  
including in the Los Angeles, California area.







1 copyrights of Plaintiff to consumers within this judicial district. Defendants have  
2 also offered to sell and actually sold counterfeit products (described more fully  
3 below) using an interactive internet website and knowing or having reason to know  
4 that consumers throughout the United States, including within this judicial district,  
5 would purchase said counterfeit goods from Defendants, believing that they were  
6 authentic goods manufactured and distributed by Plaintiff or its authorized  
7 manufacturers.

8 8. Additionally, supplemental jurisdiction exists over Defendants  
9 because on information and belief, Defendants conduct business in California and  
10 in this judicial district, have purposefully directed action to California and this  
11 district, or have otherwise availed themselves of the privileges and protections of  
12 the laws of the State of California, such that this Court's assertion of jurisdiction  
13 over Defendants does not offend traditional notions of fair play and due process.

14 9. Venue is proper, *inter alia*, pursuant to 28 U.S.C. §1391(b) because  
15 on information and belief, a substantial part of the events or omissions giving rise  
16 to the claim occurred in this judicial district, and has caused damages to Plaintiff in  
17 this district. The counterfeit Zumba® products were purchased from California and  
18 Defendants purposefully shipped these counterfeit products into California.  
19 Plaintiff operates a substantial part of its business in California, including the  
20 business described in paragraph 1. Defendants' actions within this district directly  
21 interfere with and damage Plaintiff's commercial efforts and endeavors and harms  
22 Plaintiffs' goodwill within this Venue.

### 23 **GENERAL ALLEGATIONS**

#### 24 **Plaintiff and its Well-Known Fitness Products and Programs**

25 10. Plaintiff is a health, wellness and fitness company involved in, among  
26 other things, the development, production, sale, marketing, and distribution of  
27 fitness programs, fitness DVDs, fitness products, and fitness apparel. Zumba®  
28 Fitness is the only Latin-inspired dance-fitness program that blends international



1 music, created by Grammy Award-winning producers, with dance steps to form the  
2 exceedingly popular Zumba® “fitness-party.” One of the main components of  
3 Plaintiff’s business encompasses the production, sale and distribution of its  
4 Zumba® fitness programs, fitness DVDs, fitness products, and fitness apparel,  
5 including its famous Zumba® DVDs, Zumba ® Toning Sticks and Zumba®  
6 apparel. Plaintiff’s Zumba® branded products and services have achieved great  
7 success. Since its inception in 2001, the Zumba® Fitness has grown to become the  
8 world’s largest – and most successful – dance fitness program with more than 10  
9 million people taking weekly Zumba® classes in over 90,000 locations across  
10 more than 110 countries.

11 11. Plaintiff’s Zumba® classes, including the Zumba® “fitness party,”  
12 Zumba Gold®, Zumba® Toning, Aqua Zumba®, and Zumbatomic® fitness  
13 classes, are offered throughout the world, across the United States, and in this  
14 judicial district. Additionally, Plaintiff has embodied its program in a popular  
15 Zumba® Fitness video game available on the Kinect, Nintendo Wii and Sony  
16 Playstation Move motion interactive gaming systems. And, in 2005, Plaintiff  
17 created and the Zumba Academy™ to license Zumba® Instructors and to teach  
18 Zumba® classes. Plaintiff also has a network of instructors, known as the  
19 Zumba® Instructor Network, in which thousands of Californians participate –  
20 hundreds of whom are in the Los Angeles county area.

21 12. Plaintiff has spent substantial time, money and effort in developing  
22 consumer recognition and awareness of its marks, copyrights and products.  
23 Plaintiff has spent an enormous amount of money on print and internet advertising  
24 in order to inform consumers of the benefits Plaintiff’s products and services.  
25 Through the extensive use of the Plaintiff’s marks, Plaintiff has built up and  
26 developed significant goodwill in its entire fitness product line. A wide array of  
27 newspapers, magazines and television networks has included advertising of  
28 Plaintiff’s products, which are immediately identified by Plaintiff’s marks and



1 have featured full length articles describing both the popularity and benefits of the  
2 Zumba Fitness® products, apparel and programs. These periodicals and new  
3 media outlets have included, The Washington Post, CNN, The New York Times,  
4 Shape Magazine, The Wall Street Journal, Redbook, Time Magazine, Readers  
5 Digest, The London Times, Reuters, SELF Magazine, Cosmopolitan Magazine,  
6 Variety Magazine as well as many others.

7 13. Plaintiff is also heavily involved in and uses its popularity to pursue  
8 charitable and socially beneficial goals. For example, small support groups at Zumba  
9 classes across the country started organizing Zumbathon™ charity events to raise  
10 money for breast cancer and other worthy causes. Over 1,200 of these charity  
11 events have already occurred, about one hundred of which have occurred in  
12 California. The numbers grew so high that Plaintiff itself instituted a formal  
13 campaign of Party in Pink™ Zumbathon™ charity events, with more than 725  
14 events (so far), seeking to raise awareness of breast cancer and funding for the  
15 pursuit of a cure. Plaintiff also started a campaign of Party Hearty™ Zumbathon™  
16 charity events with the American Heart Association, seeking to raise awareness of  
17 heart disease, with hundreds of events in the works and over 400 already having  
18 taken place.

19 14. As a result of Plaintiff's efforts, the quality of Plaintiff's products, the  
20 high degree of promotion and the quality and popularity of the Zumba® products  
21 and classes, the Zumba® marks and the Zumba® fitness DVDs, products, and  
22 services have been prominently placed in the minds of the public. Consumers,  
23 purchasers and the members of the public have become familiar with the Plaintiff's  
24 intellectual property, fitness DVDs, fitness programs and other products and  
25 services, and have come to recognize the Zumba® marks, products and services  
26 and associate them exclusively with Plaintiff – Plaintiff has acquired a valuable  
27 reputation and goodwill among the public as a result of such association. Indeed,  
28 the Zumba® marks are famous in the United States.



1           15. In addition to the above, Plaintiff also owns or otherwise controls  
2 copyrights in and related to their Zumba® fitness products, programs and services.  
3 Plaintiff's rights protect the entirety of the Zumba DVDs and the entirety of the  
4 creative elements embodied in Zumba® fitness products, programs and services.

5           16. While Plaintiff has gained significant common law trademark and  
6 other rights in its Zumba® products and services through its use, advertising and  
7 promotion, Plaintiff has also protected its valuable rights by filing for and  
8 obtaining federal trademark and copyright registrations.

9           17. Plaintiff owns the following United States Trademark Registrations  
10 for Zumba® and their "Zumba" related marks: U.S. Reg. Nos. 3244094  
11 (Registered May 22, 2007); 3884150 (Registered November 30, 2010); 3717909  
12 (Registered December 1, 2009); 3851238 (Registered September 21, 2010);  
13 3799511 (Registered June 8, 2010); 3799050 (Registered June 8, 2010); 3618757  
14 (Registered May 12, 2009); 3501639 (Registered September 16, 2008); 3452926  
15 (Registered June 24, 2008); 3452872 (Registered June 24, 2008); 3435705  
16 (Registered May 27, 2008); and 3296721 (Registered September 25, 2007). These  
17 are attached hereto as Exhibits "A"-"L."

18           18. Plaintiff also has several marks related to its Zumba® line of products  
19 and services, pending registration, having the following United States Trademark  
20 Serial Numbers: 85238076; 85178051; 85207043; 85114273; 83131063; 85131208;  
21 7770898; and 77497774.

22           19. Plaintiff also owns several United States Copyright Registrations  
23 relating to its Zumba ® fitness DVDs and fitness products, including the Copyright  
24 Registrations with the following registration numbers: SR0000646122 (Registered  
25 June 10, 2010); SR0000646123 (Registered June 10, 2010); SR0000646121  
26 (Registered June 10, 2010); VA0001654875 (Registered March 3, 2009);  
27 TX0007029953 (Registered September 23, 2009); PA0001634065 (Registered  
28 May 15, 2009); SR0000646124 (Registered June 10, 2010); VA0001724930



1 (Registered July 14, 2009); and SR0000665581 (Registered November 8, 2010).  
2 Certificates of Registration for each these Copyrights are attached hereto as  
3 Exhibits "M"- "U."

4 20. Plaintiff also has copyrights in numerous other works related to its  
5 DVD products and other services and products, many of which are pending in  
6 applications for copyright with the U.S. Copyright Office. The relevant  
7 application numbers are 1-571711041; 1-571665911; 1-549820239; 1-543235826;  
8 1-542664272; 1-542663792; 1-542663692; 1-540928432; 1-540593549; 1-  
9 540534516; 1-540533909; 1-540533662; 1-540061825; 1-539956577; 1-  
10 539534922; 1-539534655; 1-539484198; 1-539484171; 1-539484012; 1-  
11 539199342; 1-538175327; 1-538175656; 1-538150545; 1-537165969; 1-  
12 524224861; and 1-453233831.

13 21. Plaintiff has never authorized or consented to Defendants' use of  
14 Plaintiff's Zumba® or other Trademarks, its copyrights or any confusingly similar  
15 marks, colorable imitations, or copied or derivative works by Defendants; nor has  
16 Plaintiff authorized Defendants to manufacture, copy, sell, import, market, or  
17 distribute any Zumba® product.

18 **Defendants' Wrongful and Infringing Conduct**

19 22. Particularly in light of the success of Plaintiff and Plaintiff's products  
20 as well as the reputation they have gained, Plaintiff and its products have become  
21 targets for unscrupulous individuals and entities who wish to take a free ride on  
22 both the goodwill, reputation and fame Plaintiff has spent considerable effort and  
23 resources to build up in its products and marks, and the works embodied in  
24 Plaintiff's fitness products.

25 23. A large number of these individuals and entities deal in pirated and  
26 counterfeit Zumba®-branded DVDs and other products and services, including the  
27 famous Zumba® Fitness 4-disc original DVD product, Zumba® Fitness Total  
28 Body Transformation DVD Set, Zumba® Fitness Toning Sticks, and Zumba®



1 apparel and Zumba® Instructor Network materials. Their actions vary and include  
2 manufacturing, copying, exporting, importing, advertising, promoting, selling, and  
3 distributing counterfeit and otherwise unauthorized products.

4 24. Defendants own and operate a webpage on eBay.com under the name  
5 “memorablewedding.” Through this webpage, Defendants regularly and  
6 systematically advertised, marketed, distributed and sold products bearing  
7 unauthorized Zumba’s® registered trademarks and copyrighted materials. As of  
8 June 22, 2011, Defendants’ webpage showed at least 21 prior sales of Zumba®  
9 products. Indeed, Defendants’ webpage shows over 21 feedbacks from various  
10 purchasers.

11 25. Through such business activities, Defendants purposely derived  
12 benefit from their interstate commerce activities by expressly targeting foreseeable  
13 purchasers in the State of California. But for Defendants’ advertising, soliciting  
14 and selling of counterfeit Zumba® products, Plaintiff would not have been able to  
15 make a purchase of the subject product.

16 26. On May 6, 2011, in its ongoing investigation of counterfeit sales of  
17 Zumba® products, from the State of California, Plaintiff purchased a counterfeit  
18 Zumba® Fitness 4 DVD box set from Defendants, for a cost of \$43.49 charged to  
19 the PayPal electronic payment account of Plaintiff’s investigator. A true and  
20 correct copy of the website purchase receipt is attached hereto as Exhibit “V.”

21 27. Defendants intentionally and knowingly accepted Plaintiff’s money  
22 from a financial institution located in the State of California.

23 28. Defendants also intentionally and knowingly delivered the counterfeit  
24 product into the State of California.

25 29. The product purchased from Defendants was inspected to determine  
26 authenticity. The inspection of the purchased item confirmed that the item  
27 Defendants sold to the investigator was in fact a counterfeit and an unauthorized  
28 Zumba® Fitness 4 DVD box set.



1           30. By these sales – and, on information and belief, Defendants’ other  
2 dealings in counterfeit product(s) (including importing, advertising, displaying,  
3 distributing, selling and/or offering to sell counterfeit and unauthorized product) –  
4 Defendants violated and continue to violate Plaintiff’s exclusive rights in its  
5 copyrighted and trademarked materials, goods and services, and use images and  
6 marks that are confusingly similar to, identical to, and/or constitute counterfeit  
7 reproductions of Plaintiff’s trademarks to confuse consumers and aid in the  
8 promotion and sales of its unauthorized product. Defendants’ conduct and use  
9 began long after Plaintiff’s adoption and use of its Zumba® trademarks, after  
10 Plaintiff obtained the copyright and trademark registrations alleged above, and  
11 after Plaintiffs marks became famous. Indeed, Defendants had knowledge of  
12 Plaintiff’s ownership of the marks, and of the fame in such marks, prior to the  
13 actions alleged herein, and adopted them in bad faith and with an intent to cause  
14 confusion, tarnish, counterfeit and dilute Plaintiff’s marks and copyrighted  
15 products. Neither Plaintiff nor any authorized agents have consented to  
16 Defendants’ use of Plaintiff’s Zumba® trademarks or copyrights in the manner  
17 complained of here.

18           31. Defendants’ actions were committed in bad faith and with the intent to  
19 dilute Plaintiff’s marks, and to cause confusion and mistake, and to deceive the  
20 consuming public and the public at large as to the source, sponsorship and/or  
21 affiliation of Defendants, and/or Defendants’ counterfeit and unauthorized goods.  
22 By its wrongful conduct, Defendants have traded upon and diminished Plaintiff’s  
23 goodwill.

24           32. In committing these acts, Defendants have, among other things,  
25 willfully and in bad faith committed the following acts, all of which have and will  
26 continue to cause irreparable harm to Plaintiff: (i) infringed, tarnished,  
27 counterfeited and diluted Plaintiff’s rights in the Zumba® marks; (ii) infringed  
28 Plaintiff’s copyrights; (iii) applied counterfeit marks; (iv) misled the public into



believing there is an association or connection between Defendants and Plaintiff and/or the products advertised and sold by Defendants and Plaintiff; (v) used false designations of origin on or in connection with its goods and services; (vi) committed unfair competition; (vii) engaged in counterfeiting; and (viii) unfairly profited from such activity. Unless enjoined, Defendants will continue to cause irreparable harm to Plaintiffs.

### **FIRST CAUSE OF ACTION**

#### **(Infringement of Registered Trademarks Against RENEE ETHERIDGE, and Does 1-10, Inclusive)**

#### **[15 U.S.C. §1114/Lanham Act §32(a)]**

33. Plaintiff repeats and re-alleges every allegation set forth in Paragraphs 1-32.

34. Plaintiff has continuously used its ZUMBA® trademark in interstate commerce since at least as early as July 31, 2001 and, subsequently, has used continuously in commerce its U.S. Trademark Registration Nos. 3452926, 3717909, 3244094, 3435705, and 3452872 (collectively, the “asserted marks”).

35. Plaintiff, as the owner of all right, title and interest in and to these trademarks, has standing to maintain an action for trademark infringement under the U.S. Trademark Statute 15 U.S.C. §1114.

36. Defendants are and at the time of their actions complained of herein were actually aware that Plaintiff is the registered trademark holder of these Zumba® marks. (*See Exhibits “A” – “L”*).

37. Defendants did not and failed to obtain the consent or authorization of Plaintiff as the registered owner of the marks to deal in and commercially distribute, market and sell Zumba® fitness DVDs and products bearing Plaintiff’s asserted marks into the stream of commerce.

38. Defendants intentionally and knowingly used in commerce the reproductions, counterfeits, copies, and/ or colorable imitations of Plaintiff’s

1 asserted marks in connection with the sale, offering for sale, distribution, or  
2 advertising of Defendant's goods by offering, advertising, promoting, retailing,  
3 selling, and distributing counterfeit Zumba® DVDs and products bearing the  
4 Zumba® marks.

5 39. Defendants reproduced, counterfeited, copied, and colorably imitated  
6 Plaintiff's registered Zumba® marks and applied such reproductions, counterfeits,  
7 copies, or colorable imitations to labels, signs, prints, packages, wrappers,  
8 receptacles and/or advertisements intended to be used in commerce upon or in  
9 connection with the sale, offering for sale, distribution, and/or advertising of  
10 goods. Defendants thereupon offered, advertised, promoted, retailed, sold, and  
11 distributed counterfeit Zumba® DVDs and products bearing the Zumba® marks.

12 40. Defendants' egregious and intentional use and sale of fake, pirated  
13 and counterfeit items bearing Plaintiff's trademarks is likely to cause confusion, or  
14 to cause mistake, or to deceive, mislead, betray, and defraud consumers who  
15 believe that Defendants' items are authentic products manufactured by Plaintiff.

16 41. Defendants' acts have been committed with knowledge of Plaintiff's  
17 exclusive rights and goodwill in the marks, as well as with bad faith and the intent  
18 to cause confusion or to cause mistake and to deceive.

19 42. Plaintiff has suffered and will continue to suffer substantial and  
20 irreparable injury, loss and damage to its rights in and to the Zumba® marks and  
21 the goodwill associated therewith, for which it has no adequate remedy at law; thus  
22 Plaintiff requests injunctive relief.

23 43. Defendants' continued and knowing use of Plaintiff's asserted marks  
24 without Plaintiff's consent or authorization constitutes intentional infringement of  
25 Plaintiff's federally registered trademarks in violation of Section 32 of the *Lanham*  
26 *Act*, 15 U.S.C. §1114. Based on such conduct, Plaintiff is entitled to injunctive  
27 relief as well as monetary damages, and other remedies provided by section 1116,  
28



1 1117, and 1118, including Defendants' profits, treble damages, reasonable  
2 attorneys' fees, costs, statutory damages and/or prejudgment interest.

3 **SECOND CAUSE OF ACTION**

4 **(Federal Copyright Infringement Against RENEE ETHERIDGE, and Does 1-**  
5 **10, Inclusive)**

6 **[17 U.S.C. §501(a)]**

7 44. Plaintiff repeats and re-alleges every allegation set forth in Paragraphs  
8 1-43.

9 45. Plaintiff is the exclusive owner of copyrights in and related to its  
10 Zumba® fitness DVDs and products and possesses copyright registrations with the  
11 United States Copyright Office relating to the same, including U.S. Copyright  
12 Registration Numbers SR0000646122; SR000064123; SR000064612;  
13 VA0001654875; TX007029953; PA0001634065; SR0000646124; and  
14 VA0001724930. (*See Exhibits M-U*).

15 46. Defendants did not seek and failed to obtain Plaintiff's consent or  
16 authorization to utilize, manufacture, reproduce, copy, display, prepare derivative  
17 works, distribute, sell, transfer, rent, perform, and/or market Plaintiff's copyright-  
18 protected materials.

19 47. Without permission, Defendants intentionally and knowingly  
20 reproduced, counterfeited, copied, displayed, and/or manufactured Plaintiff's  
21 protected works by offering, advertising, promoting, retailing, selling, distributing  
22 counterfeit Zumba® DVDs and products which are at a minimum substantially  
23 similar to Plaintiff's copyright protected works.

24 48. Defendants' acts as alleged herein, constitute infringement of  
25 Plaintiff's copyright, including Plaintiff's exclusive rights to reproduce, distribute  
26 and/or sell such protected material.

27 49. Defendants' knowing and intentional copyright infringement as  
28 alleged herein has caused and will continue to cause substantial and irreparable

1 harm to Plaintiff and has and will continue to cause damage to Plaintiff. Plaintiff  
 2 is therefore entitled to injunctive relief, actual damages, statutory damages,  
 3 Defendants' profits, increased damages, and reasonable attorney's fees and costs.

### 4 **THIRD CAUSE OF ACTION**

5 **(False Designation of Origin & Unfair Competition Against RENEE**

6 **ETHERIDGE, and Does 1-10, Inclusive)**

7 **[15 U.S.C. §1125(a)/Lanham Act §43(a)]**

8 50. Plaintiff repeats and re-alleges every allegation set forth in Paragraphs  
 9 1-49.

10 51. Plaintiff, as the owner of all common law right, title, and interest in  
 11 and to the Zumba® marks, has standing to maintain an action for false designation  
 12 of origin and unfair competition under the Federal Trademark Statute, Lanham Act  
 13 section 43(a) (15 U.S.C. §1125). Plaintiff's asserted marks are fanciful, inherently  
 14 distinctive and/or have acquired distinctiveness.

15 52. Defendants have without authorization, on or in connection with its  
 16 goods and services, used in commerce marks that are confusingly similar to the  
 17 asserted marks, and/or has made false designations of origin which are likely to  
 18 cause confusion or cause mistake or to deceive as to the affiliation, connection or  
 19 association of Defendants with Plaintiff, and/or as to the origin, sponsorship or  
 20 approval of Defendants' goods or services or commercial activities.

21 53. Defendants' conduct described above violates the Lanham Act, and  
 22 Defendants have unfairly competed with and injured and, unless immediately  
 23 restrained, will continue to injure Plaintiff, causing damage to Plaintiff in an  
 24 amount to be determined at trial, and will cause irreparable injury to Plaintiff's  
 25 goodwill and reputation associated with the value of Plaintiff's mark.

26 54. On information and belief, the conduct of Defendants has been  
 27 knowing, deliberate, willful, intended to cause confusion, or to cause mistake or to  
 28 deceive and in blatant disregard of Plaintiff's rights.



1        55. Defendants knew or by the exercise of reasonable care should have  
2 known that their adoption and commencement of use in commerce and continuing  
3 use of marks that are confusingly similar to and constitute a counterfeit  
4 reproduction of Plaintiff's asserted marks would cause confusion, mistake, or  
5 deception among purchasers, users and the public.

6        56. Defendants' egregious and intentional use and sale of fake, pirated  
7 and counterfeit items bearing Plaintiff's asserted marks unfairly competes with  
8 Plaintiff and is likely to cause confusion, mistake, or to deceive, mislead, betray,  
9 and defraud consumers to believe that the substandard imitations are genuine  
10 Zumba® or products.

11        57. Defendants' continuing and knowing use of Plaintiff's asserted marks  
12 constitutes false designation of origin and unfair competition in violation of  
13 Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a), causing Plaintiff to suffer  
14 substantial and irreparable injury for which it has no adequate remedy at law.

15        58. Defendants' wrongful conduct has permitted or will permit it to make  
16 substantial sales and profits on the strength of Plaintiff's marketing, advertising,  
17 sales and consumer recognition. As a direct and proximate result of Defendants'  
18 wrongful conduct, as alleged herein, Plaintiff has been and will be deprived of  
19 sales of its Zumba® products in an amount as yet unknown but to be determined at  
20 trial, and has been deprived and will be deprived of the value of its marks as  
21 commercial assets in an amount as yet unknown but to be determined at trial.  
22 Plaintiff seeks damages and an accounting of Defendants' profits, and requests that  
23 the Court grant Plaintiff three times that amount in the Court's discretion.

24        59. Based on Defendants' wrongful conduct, Plaintiff is entitled to  
25 injunctive relief as well as monetary damages, and other remedies as provided by  
26 the Lanham Act, including Defendants' profits, treble damages, reasonable  
27 attorneys' fees, costs and prejudgment interest.

28 ///

**FOURTH CAUSE OF ACTION**

**(Dilution Against RENEE ETHERIDGE, and Does 1-10, Inclusive)**

**[15 U.S.C. §1125(c)]**

60. Plaintiff repeats and re-alleges every allegation set forth in Paragraphs 1-59.

61. Plaintiff's asserted marks are distinctive and famous within the meaning of the Lanham Act.

62. Upon information and belief, Defendants' unlawful actions began long after Plaintiff's mark became famous, and Defendants acted knowingly, deliberately and willfully with the intent to trade on Plaintiff's reputation and to dilute Plaintiff's asserted marks. Defendants' conduct is willful, wanton and egregious.

63. Defendants' intentional sale of fake, pirated and counterfeit items bearing Plaintiff's marks is likely to cause confusion, mistake, or to deceive, mislead, betray, and defraud consumers to believe that the substandard imitations are genuine Zumba® fitness DVDs and products. The actions of Defendants complained of herein have diluted and will continue to dilute Plaintiff's asserted and other marks, and are likely to impair the distinctiveness, strength and value of Plaintiff's marks, and injure the business reputation of Plaintiff and its marks.

64. Defendants' acts have caused and will continue to cause Plaintiff irreparable harm. Plaintiff has no adequate remedy at law to compensate it fully for the damages that have been caused and which will continue to be caused by Defendants' unlawful acts, unless they are enjoined by this Court.

65. As the acts alleged herein constitute a willful violation of section 43(c) of the Lanham Act, 15 U.S.C. section 1125(c), Plaintiff is entitled to injunctive relief as well as monetary damages and other remedies provided by 15

///

///



1 U.S.C. §§1116, 1117, 1118, and 1125(c), including Defendants' profits, actual and  
 2 statutory damages, treble damages, reasonable attorney's fees, costs and  
 3 prejudgment interest.

#### 4 **FIFTH CAUSE OF ACTION**

5 **(Unlawful, Unfair, Fraudulent Business Practices Against RENEE**

6 **ETHERIDGE, and Does 1-10, Inclusive)**

7 ***[California Business & Professions Code §17200 et seq.]***

8 66. Plaintiff repeats and re-alleges every allegation set forth in Paragraphs  
 9 1-65.

10 67. By marketing, advertising, promoting, selling and/or otherwise  
 11 dealing in the counterfeit Zumba® product, Defendants have engaged in unfair  
 12 competition including unlawful, unfair and fraudulent business practices in  
 13 violation of the California Business and Professions Code §17200 *et seq.*

14 68. Defendants' marketing, advertising, promoting, selling and/or  
 15 otherwise dealing in the counterfeit Zumba® product is in violation and derogation  
 16 of Plaintiff's rights and is likely to cause confusion, mistake and deception among  
 17 consumers and the public as to the source, origin, sponsorship, or quality of the  
 18 goods of Defendant, thereby causing loss, damage and injury to Plaintiff and to the  
 19 purchasing public. Defendants' conduct was intended to cause such loss, damage  
 20 and injury.

21 69. Defendants knew or by the exercise of reasonable care should have  
 22 known that their marketing, advertising, promoting, selling and/or otherwise  
 23 dealing in and their continuing marketing, advertising, promoting, selling and/or  
 24 otherwise dealing in the counterfeit product would cause confusion mistake or  
 25 deception among purchasers, users and the public.

26 70. By marketing, advertising, promoting, selling and/or otherwise  
 27 dealing in and their continuing marketing, advertising, promoting, selling and/or  
 28 otherwise dealing in counterfeit versions of Plaintiffs marks and products,

1 Defendants intended to and did induce and intends to and will induce customers to  
2 purchase its products by trading off the extensive goodwill built up by Plaintiff's in  
3 its marks.

4 71. Upon information and belief, the conduct of Defendants has been  
5 knowing, deliberate, willful, intended to cause confusion, or to cause mistake or to  
6 deceive, and in disregard of Plaintiff's rights.

7 72. Defendants' wrongful conduct, as alleged above, has permitted and  
8 will permit them to make substantial sales and profits on the strength of Plaintiff's  
9 nationwide marketing, advertising, sales and consumer recognition. As a direct  
10 and proximate result of Defendants' wrongful conduct, as alleged herein, Plaintiff  
11 has been and will be deprived of substantial sales of its products in an amount as  
12 yet unknown but to be determined at trial, and has been and will be deprived of the  
13 value of its trademarks as commercial assets, in an amount as yet unknown but to  
14 be determined at trial. Plaintiff seeks restitution in this matter, including an order  
15 granting Defendants' profits stemming from its infringing activity, and its actual  
16 and/or compensatory damages.

17 73. Plaintiff has no adequate remedy at law for Defendants' continuing  
18 violation of its rights set forth above. Plaintiff seeks injunctive relief.

19 74. Plaintiff further requests a court order that an asset freeze or  
20 constructive trust be imposed over all monies and assets in Defendants' possession  
21 which rightfully belong to Plaintiff.

22 **SIXTH CAUSE OF ACTION**

23 **(Unfair Competition Against RENEE ETHERIDGE, and Does 1-10,**

24 **Inclusive)**

25 **[California Common Law]**

26 75. Plaintiff repeats and re-alleges every allegation set forth in Paragraphs  
27 1-74.  
28



1        76. By marketing, advertising, promoting, selling and/or otherwise  
2 dealing in the counterfeit Zumba® product, Defendants have engaged in unfair  
3 competition including unlawful, unfair and fraudulent business practices in  
4 violation of the common law of the State of California.

5        77. Defendants' marketing, advertising, promoting, selling and/or  
6 otherwise dealing in the counterfeit Zumba® product is in violation and derogation  
7 of Plaintiff's rights and is likely to cause confusion, mistake and deception among  
8 consumers and the public as to the source, origin, sponsorship, or quality of the  
9 goods of Defendant, thereby causing loss, damage and injury to Plaintiff and to the  
10 purchasing public. Defendants' conduct was intended to cause such loss, damage  
11 and injury.

12        78. Defendants knew or by the exercise of reasonable care should have  
13 known that their marketing, advertising, promoting, selling and/or otherwise  
14 dealing in and their continuing marketing, advertising, promoting, selling and/or  
15 otherwise dealing in the counterfeit product would cause confusion mistake or  
16 deception among purchasers, users and the public.

17        79. By marketing, advertising, promoting, selling and/or otherwise  
18 dealing in and their continuing marketing, advertising, promoting, selling and/or  
19 otherwise dealing in counterfeit versions of Plaintiffs marks, copyrights and  
20 products, Defendants intended to and did induce and intends to and will induce  
21 customers to purchase its products by trading off the extensive goodwill built up by  
22 Plaintiff's in its marks.

23        80. Upon information and belief, the conduct of Defendants has been  
24 knowing, deliberate, willful, intended to cause confusion, or to cause mistake or to  
25 deceive, and in disregard of Plaintiff's rights.

26        81. Defendants' wrongful conduct, as alleged above, has permitted and  
27 will permit them to make substantial sales and profits on the strength of Plaintiff's  
28 nationwide marketing, advertising, sales and consumer recognition, all of which

1 Plaintiff invested substantial time and effort to create and protect. As a direct and  
 2 proximate result of Defendants' wrongful conduct, as alleged herein, Plaintiff has  
 3 been and will be deprived of substantial sales of its products in an amount as yet  
 4 unknown but to be determined at trial, and has been and will be deprived of the  
 5 value of its trademarks as commercial assets, in an amount as yet unknown but to  
 6 be determined at trial. Plaintiff seeks an order granting Defendants' profits  
 7 stemming from its infringing activity, and its actual and/or compensatory damages.

8 82. Plaintiff has no adequate remedy at law for Defendants' continuing  
 9 violation of its rights set forth above. Plaintiff seeks preliminary and permanent  
 10 injunctive relief.

11 83. Plaintiff seeks exemplary or punitive damages for Defendants'  
 12 intentional misconduct.

### 13 **SEVENTH CAUSE OF ACTION**

14 **(Unjust Enrichment Against RENEE ETHERIDGE, and Does 1-10, Inclusive)**

15 84. Plaintiff repeats and re-alleges every allegation set forth in Paragraphs  
 16 1-83.

17 85. By virtue of the egregious and illegal acts of Defendants as described  
 18 above, Defendants have been unjustly enriched in an amount to proven at trial.

19 86. Defendants' retention of monies gained through its deceptive business  
 20 practices, infringement, acts of counterfeit and otherwise would serve to unjustly  
 21 enrich Defendants and would be contrary to the interests of justice.

22 **WHEREFORE**, Plaintiff ZUMBA FITNESS, LLC, prays for judgment  
 23 against Defendant RENEE ETHERIDGE, and Does 1-10, inclusive, and each of  
 24 them, as follows:

25 A. For an award of Defendants' profits and Plaintiff's damages in an amount  
 26 to be proven at trial for trademark infringement under 15 U.S.C.  
 27 §1114(a);

28 B. For an award of Defendants' profits and Plaintiff's damages in an amount



- 1 to be proven at trial for copyright infringement under 17 U.S.C. §501(a);
- 2 C. For an award of Defendants' profits and Plaintiff's damages in an amount
- 3 to be proven at trial for false designation of origin and unfair competition
- 4 under 15 U.S.C. §1125(a);
- 5 D. For an award of Defendants' profits and Plaintiff's damages in an amount
- 6 to be proven at trial for trademark dilution under 15 U.S.C. §1125(c);
- 7 E. In the alternative to actual damages and Defendants' profits for the
- 8 infringement and counterfeiting of Plaintiff's trademark pursuant to the
- 9 Lanham Act, for statutory damages pursuant to 15 U.S.C. §1117(c),
- 10 which election Plaintiff will make prior to the rendering of final
- 11 judgment;
- 12 F. In the alternative to actual damages and Defendants' profits pursuant to
- 13 17 U.S.C. §504(b), for statutory damages pursuant to 17 USC §504(c),
- 14 which election Plaintiff will make prior to the rendering of final
- 15 judgment;
- 16 G. For restitution in an amount to be proven at trial for unfair, fraudulent
- 17 and illegal business practices under *Business and Professions Code*
- 18 §17200;
- 19 H. For damages to be proven at trial for common law unfair competition;
- 20 I. For temporary, preliminary and permanent injunctive relief from this
- 21 Court prohibiting Defendants from engaging or continuing to engage in
- 22 the unlawful, unfair, or fraudulent business acts or practices described
- 23 herein, including the advertising and/or dealing in any counterfeit
- 24 product; the unauthorized use of any mark, copyright or other intellectual
- 25 property right of Plaintiff; acts of trademark infringement or dilution; acts
- 26 of copyright infringement; false designation of origin; unfair competition;
- 27 and any other act in derogation of Plaintiff's rights;
- 28 J. For an order from the Court requiring that Defendants provide complete

1 accountings and for equitable relief, including that Defendants disgorge  
2 and return or pay their ill-gotten gains obtained from the illegal  
3 transactions entered into and or pay restitution, including the amount of  
4 monies that should have been paid if Defendants' complied with their  
5 legal obligations, or as equity requires;

6 K. For an order from the Court that an asset freeze or constructive trust be  
7 imposed over all monies and profits in Defendants' possession which  
8 rightfully belong to Plaintiff;

9 L. For destruction of the infringing articles in Defendants' possession under  
10 15 U.S.C. §1118 and 17 USC §503;

11 M. For treble damages suffered by Plaintiff as a result of the willful and  
12 intentional infringements and acts of counterfeiting engaged in by  
13 Defendants, under 15 U.S.C. §1117(b);

14 N. For damages in an amount to be proven at trial for unjust enrichment;

15 O. For an award of exemplary or punitive damages in an amount to be  
16 determined by the Court;

17 P. For Plaintiff's reasonable attorney's fees;

18 Q. For all costs of suit;

19 R. For such other and further relief as the Court may deem just and  
20 equitable.

21 ///

22 ///

23 ///

24 ///



**DEMAND FOR JURY TRIAL**

Plaintiff ZUMBA FITNESS, LLC, respectfully demands a trial by jury in this action.

DATED: June 24, 2011

JOHNSON & PHAM, LLP

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